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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Attn: Patent Docketing Room 2A-207			PATEL, JAY P	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/724,351

**Applicant(s)**

LUND, ARNOLD M.

**Examiner**

JAY P. PATEL

**Art Unit**

2466

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7,21 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,21 and 23-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 7, 21, 23, 25-27 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn et al. (US Patent 5916302) further in view of Berkley et al. (US Patent 6546005 B1).

3. In regards to claims 1 and 5, Dunn et al. (US Patent 5916302) disclose in figure 6, a process 36 for establishing a voice connection through a PSTN (receiving a telephone call from a calling party at a telephony network).

4. In further regards to claims 1 and 5, at step 37, the participants converse over a PSTN connection (establishing a voice channel over the telephony network, wherein the voice channel is configured to facilitate a voice communication between a called party and the calling party; wherein a voice communication between the called party and the calling party is carried over the voice channel of the telephony network). At step 41 in figure 6a, image data flows from originating conferee to conference server to other conferees and is separate from voice (establishment of a data channel to facilitate a data communication between the called party and the calling party; the data communication between the called party and the calling party is carried over the separate virtual data channel of the packet data network).

5. In further regards to claims 1 and 5, although Dunn teaches an establishment of the virtual data channel as between the called party and the calling party, Dunn fails to teach the data channel being automatically established in response to receiving the telephone call at the telephony network. Dunn in fact teaches establishing parallel voice and data connections over physically or logically separate lines extending to the PSTN and data network (see column 9, lines 51-54), where the establishment of the parallel data connection is done upon the request of a user (i.e. a manual establishment) (see column 2, lines 63-67 and column 3, lines 1-3).
6. In *In re Venner*, the court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).
7. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to establish the data channel automatically instead of manually.
8. In further regards to claims 1 and 5, Dunn fails to teach the automatic establishing of a separate parallel virtual data channel including the determining the configurations of the CPE for the calling and called parties involved, establishing the virtual data channel if the configurations are compatible and accessing a database to determine the broadband access capabilities.
9. Berkley however, teaches the above-mentioned limitations in the active user registry disclosed in figure 2 which is queried anytime a user need to communicate

through a packet or a voice network. The database is inclusive of multimedia capabilities 280, LAN and modem IP addresses 260 and URL addresses 270.

Furthermore, the calling party is contacted first with a preferred method designated by the party (see column 9, lines 37-46).

10. Therefore it would have been obvious to one skilled in the art at the time the invention was made to incorporate the active user registry taught by Berkley into the conference server taught by Dunn. The motivation to do so would be to ascertain the network address to place a conference call.

11. In regards to claim 3, step 43 in figure 6a of Dunn shows that the data signals represent displayable images, visual cues to be displayed and service request changes.

12. In regards to claim 4, at step 41 in figure 6a of Dunn, image data flows from originating conferee to conference server to other conferees and is separate from voice.

13. In regards to claim 7, at steps 40 and 41 in Dunn, voice signals and data images flow between all conferees.

14. In regards to claim 21, Dunn et al. (US Patent 5916302) disclose in figure 6, a process 36 for establishing a voice connection through a PSTN (receiving a telephone call from a calling party at a telephony network).

15. In further regards to claim 21, at step 37, the participants converse over a PSTN connection (establishing a voice channel over the telephony network, wherein the voice channel is configured to facilitate a voice communication between a called party and the calling party). At step 41 in figure 6a, image data flows from originating conferee to

conference server to other conferees and is separate from voice (establishment of a data channel between the called party and the calling party and a parallel synchronized operation of the voice and data channel between the calling party and the called party).

16. In further regards to claim 21, although Dunn teaches an establishment of the virtual data channel as between the called party and the calling party, Dunn fails to teach the data channel being automatically established in response to receiving the telephone call at the telephony network. Dunn in fact teaches establishing parallel voice and data connections over physically or logically separate lines extending to the PSTN and data network (see column 9, lines 51-54), where the establishment of the parallel data connection is done upon the request of a user (i.e. a manual establishment) (see column 2, lines 63-67 and column 3, lines 1-3).

17. In *In re Venner*, the court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).

18. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to establish the data channel automatically instead of manually.

19. In further regards to claim 21, Dunn fails to teach the automatic establishing of a separate parallel virtual data channel including the determining the configurations of the

CPE for the calling and called parties involved and establishing the virtual data channel if the configurations are compatible.

20. Berkley however, teaches the above-mentioned limitations in the active user registry disclosed in figure 2 which is queried anytime a user need to communicate through a packet or a voice network. The database is inclusive of multimedia capabilities 280, LAN and modem IP addresses 260 and URL addresses 270. Furthermore, the calling party is contacted first with a preferred method designated by the party (see column 9, lines 37-46).

21. Therefore it would have been obvious to one skilled in the art at the time the invention was made to incorporate the active user registry taught by Berkley into the conference server taught by Dunn. The motivation to do so would be to ascertain the network address to place a conference call.

22. In regards to claim 23, step 43 in figure 6a of Dunn shows that the data signals represent displayable images, visual cues to be displayed and service request changes.

23. In regards to claim 25, at steps 40 and 41 in Dunn, voice signals and data images flow between all conferees.

24. In regards to claim 26, Dunn et al. disclose in figure 6, a process 36 for establishing a voice connection through a PSTN (receiving a telephone call from a calling party at a telephony network).

25. In further regards to claim 26, at step 37, the participants converse over a PSTN connection (establishing a voice channel, wherein the voice channel is configured to

facilitate a voice communication over the telephony network between a called party and the calling party over a subscriber loop and wherein the voice channel carries the voice communication). At step 41 in figure 6a, image data flows from originating conferee to conference server to other conferees and is separate from voice (automatic establishment of a data channel between the called party and the virtual data channel carries the data communication concurrently over the subscriber loop).

26. In further regards to claim 26, although Dunn teaches an establishment of the virtual data channel as between the called party and the calling party, Dunn fails to teach the data channel being automatically established in response to receiving the telephone call at the telephony network. Dunn in fact teaches establishing parallel voice and data connections over physically or logically separate lines extending to the PSTN and data network (see column 9, lines 51-54), where the establishment of the parallel data connection is done upon the request of a user (i.e. a manual establishment) (see column 2, lines 63-67 and column 3, lines 1-3).

27. In *In re Venner*, the court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).

28. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to establish the data channel automatically instead of manually.



29. In further regards to claim 26, Dunn fails to teach, determining a data address for the calling party on a data network and a data address for a called party on the data network. Berkley et al. however, teach the above-mentioned limitation where a database is queried in the user registry to ascertain the identification information (see figure 2, element 260).

30. In further regards to claim 26, Dunn also fails to teach the automatic establishing of a separate parallel virtual data channel including the determining the configurations of the CPE for the calling and called parties involved and establishing the virtual data channel if the configurations are compatible.

31. Berkley however, teaches the above-mentioned limitations in the active user registry disclosed in figure 2 which is queried anytime a user need to communicate through a packet or a voice network. The database is inclusive of multimedia capabilities 280, LAN and modem IP addresses 260 and URL addresses 270. Furthermore, the calling party is contacted first with a preferred method designated by the party (see column 9, lines 37-46).

32. Therefore it would have been obvious to one skilled in the art at the time the invention was made to incorporate the active user registry taught by Berkley into the conference server taught by Dunn and the automatic establishment of a data channel as taught by Greene. The motivation to do so would be to ascertain the network address to place a conference call.

33. In regards to claim 29, Dunn teaches in figure 6a, at steps 40 and 41, voice signals and data images flow between all conferees.

34. In regards to claims 27 and 30, Dunn in combination with Berkley teaches all the limitations of parent claims 26 and 29. However, Dunn fails to teach ascertaining a data address that is an IP address and transmitting the data address of the party to all the attendees. Berkley teaches the above-mentioned limitation where a database is queried in the user registry to ascertain the identification information (see figure 2, element 260) and using the appropriate contact information initiation communications (see figure 3a and 3b, steps 306 and 316).

35. Therefore it would have been obvious to one skilled in the art at the time the invention was made to incorporate the active user registry taught by Berkley into the conference server taught by Dunn and the automatic establishment of a data channel as taught by Greene. The motivation to do so would be to ascertain the network address to place a conference call.

36. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn et al. (US Patent 5916302) in view of Berkley et al. (US Patent 6546005 B1) further in view of Fukuoka et al. (US Patent 5914940).

37. In regards to claim 24, Dunn in combination with Berkley teaches or is obvious over all the limitations of parent claim 21 as stated above.

38. Dunn and Berkley however fails to teach, sending video signals over the virtual data network. Fukuoka however, teaches the above-mentioned limitation in figure 5 step S8 where a composite video packet is sent over a packetized network.

39. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to allow the transmission of a video packet as taught by Fukuoka in

the data network taught by Dunn and Berkley. The motivation to do so would be allow a network user to send video signal in order to enhance the conferencing between all the parties involved.

40. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn et al. (US Patent 5916302) in view of Berkley et al. (US Patent 6546005 B1) as applied to claims 26 and 27 above and further in view of DeSimone et al. (US Patent 6138144).

41. In regards to claim 28, Dunn in combination with Berkley teaches all the limitations of parent claims 26 and 27. Neither Dunn nor Berkley teaches the virtual data channel using an ATM protocol.

42. DeSimone however, teaches the above-mentioned limitation in figure 1 where a user 101-1 establishes a connection with multicast server 130 using the ATM protocol (see column 7, lines 1-2).

43. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to use of the ATM protocol as taught by DiSimone to set up the virtual data channel as taught by Dunn, the active user registry taught by Berkley. The motivation to do so would be to allow the option of assigning the variable bit rate services that ATM allows.

#### ***Response to Arguments***

44. Applicant's arguments filed 7/30/2009 have been fully considered but they are not persuasive.

45. The applicant also argues on page 8 with respect to Dunn that Dunn fails to suggest a virtual data channel being established after the configuration of CPE for the

calling party is determined to be compatible with the configuration of CPE for the called party. However the examiner has relied on *In re Venner*, where the court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).

46. Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to establish the data channel automatically instead of manually.

47. The applicant argues on pages 8-10 with respect to the Berkley reference that the limitation at issue (in the amended claim 1 of the present application) is directed to determining the configuration of the CPE utilized by the parties and not determining the configuration of the parties themselves. However, in addition to the disclosure from Berkley relied on above and after taking a closer look at the Berkley AUR database respectfully disagrees. The data elements in entry category 220 represent various home, work, cellular telephone (CPE) numbers by which the user may normally be reached (see column 8, lines 1-7 in Berkley). Furthermore, entry category 260 contains data elements LAN IP and Modem IP representing the IP addresses by which the user may be reach via a packet network for carrying out real-time IP message (see column 8, lines 23-27 in Berkley). Furthermore, the applicant has cited Berkley column 7 lines 9-67 to argue that the database in Berkley is merely a dynamic linked list however the elements the examiner has cited (i.e. 220 in figure 2) read on a CPE associated with a called or calling party being configured.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAY P. PATEL whose telephone number is (571)272-3086. The examiner can normally be reached on Mon.-Thurs.: 8:00 a.m. - 6:30 p.m. .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Ryman can be reached on (571)272-3152. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. P. P./  
Examiner, Art Unit 2466

/Jason E Mattis/  
Primary Examiner, Art Unit 2461